

APPEAL NO. 033091
FILED JANUARY 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 5, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, extends to include a cervical sprain/strain, but does not extend to include posterior spondylosis at C5-6 and a posterior disc bulge at C6-7; that as a result of his compensable injury, the claimant had disability from May 14 through July 23, 2002; and that the claimant reached maximum medical improvement on April 25, 2003, with a five percent impairment rating (IR) as certified in a report by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals the hearing officer's determinations on the extent of the compensable injury, disability, MMI, and IR. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed as reformed herein.

We reform the hearing officer's Statement of the Evidence to reflect that the designated doctor evaluated the claimant on April 25, 2003 (not April 25, 2002). The hearing officer's Finding of Fact No. 6 correctly states that the designated doctor's evaluation of the claimant was on April 25, 2003. We reform the hearing officer's decision to reflect that the claimant is entitled to impairment income benefits (IIBs) for a period of 15 weeks beginning on April 26, 2003 (not July 24, 2002). An employee's entitlement to IIBs begins on the day after the date the employee reaches MMI. See Section 408.121(a).

It is undisputed that the claimant sustained a compensable injury to his jaw on _____. The issues regarding the extent of the compensable injury as it relates to the claimant's neck, the period of disability, the date of MMI, and the IR involved questions of fact for the hearing officer to resolve from the evidence presented at the CCH. With regard to MMI and IR, Sections 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of MMI and IR on the designated doctor's report unless the great weight of the medical evidence is to the contrary. Although the designated doctor examined the claimant on April 25, 2003, he delayed issuing his report until after the claimant underwent a cervical MRI and a brain MRI, and his report dated June 23, 2003, which assessed a five percent IR, reflects that he considered the MRI results in assessing the MMI date and IR. The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report that certified that the claimant reached MMI on April 25, 2003, with a five percent IR. Although there is conflicting evidence on the disputed issues of the extent of the compensable injury,

disability, MMI, and IR, we conclude that the hearing officer's determinations on those issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge